

Tribute: Daniel J. Dykstra—The Utah Years 1949-1965

*John J. Flynn**

It is with humility and trepidation that I rise to recount Dan Dykstra's years as a teacher, leader, and friend of the University of Utah, its College of Law, his Utah colleagues, and his Utah students. Humility because there are those with us today who are better able to recall those years like his life-long friends Bob and Peggy Swenson and Rita Fordham. Also, there are others who knew the Dykstra family as close friends during all their Utah years and could speak more eloquently than I, but who could not be here today, like Fred and Belva Emery, Spence Kimball, Evelyn and Wally Bennett, and Francis and Bob Schmid. I speak with trepidation because Dan Dykstra was noted for his humility and selflessness; a man always concerned for the well-being and success of others and not one to publicize his own achievements or volunteer his personal successes. Dan did not, as the Irish say, "put on airs" about himself. Therefore, because I suspect he would frown upon and be uncomfortable with our praising him, I beseech Dan to forgive me now, and in the hereafter, for recounting how much he has meant to all of us as a friend, colleague, mentor, leader, and as an example—both in his professional and private life—as an exemplary husband, parent and teacher, and as a person of unflinching personal integrity.

Daniel J. Dykstra was recruited to teach law at Drake University in 1948 through the efforts of his long-term friend, Bob Swenson, after Dan completed his S.J.D. at the University of Wisconsin. He moved to the University of Utah College of Law in 1949 when the school was undergoing a significant transition from a small regional law school barely qualified for accreditation to one of quality and academic stature. Classes were taught on a quarterly system in those days, including a summer quarter to serve the needs of returning veterans anxious to complete their legal education as quickly as possible. Most of the faculty taught two classes a quarter, and classes were held six days per week. Law professors were giants in those days—underpaid and over-worked giants.

When Dan joined the Utah faculty, the Dean of the law school, William Leary, was retiring after serving as dean for 35 years, and a substantial turnover and expansion of the faculty was underway. Dan Dykstra was

*This tribute was originally delivered at Daniel Dykstra's memorial service, on the campus of the University of California, Davis, by John J. Flynn, Hugh B. Brown Professor of Law, The University of Utah College of Law.

among the first of a truly unique group of young law teachers who happened to enter law teaching at that time and to do so at the University of Utah. The group became close friends for life and went on to leave their mark on legal education, academic scholarship, and academic administration at Utah and throughout the Nation.

Among them were:

Edgar Bodenheimer, an outstanding scholar and teacher of jurisprudence who would later join the Davis Law School faculty after Dan left Utah to become the first faculty member of the then new Davis Law School. Edgar had joined the Utah faculty a few years before Dan arrived. Edgar's wife Brigitte, some years later and after their children had left home for college, became a member of the Utah law faculty, and then the Davis faculty, where both Edgar and Brigitte helped Dan to establish the Davis law school;

Spencer Kimball, who became the new Dean at Utah at age 31 just as Dan Dykstra arrived to join the Utah law faculty in 1949. Spence would go on later to teach at Michigan, become the Dean at Wisconsin, a member of the Chicago law faculty, and the country's leading scholar of insurance law;

Alfred C. Emery, who joined the Utah faculty about the same time as Dan and later became Academic Vice-President, Provost, and President of the University of Utah, joining Dan in recent years to teach at Hawaii;

Sanford Kadish, who joined the Utah faculty in 1951 and later went on to become a leading member of the faculties at Michigan and Berkeley, Dean at Berkeley, and a leading scholar in criminal law;

Bob Swenson, who Dan helped recruit from Drake to Utah in 1953 where he became, and remains, an outstanding teacher and the leading scholar in America on water law. Bob's wife Peggy became and remains active in Utah political affairs. Bob went on to teach at several law schools throughout the country including Stanford, NYU, and Hastings and continues to teach and be one of our most popular teachers at Utah after more than five decades in the classroom; and

The late Ron Degnan, who Dan was also instrumental in recruiting was an outstanding classroom teacher, and who joined the Utah faculty from Drake and later went on to become a member of the faculty at Berkeley.

After Dan became Dean of the Utah College of Law in 1954, he managed to persuade the University to authorize the hiring of Wallace Bennett and Robert Schmid to form with the others the nucleus of an

outstanding law faculty and law school. Wally Bennett, who remembers Dan as one of the best deans the law school ever had, went on to serve as the Associate Dean of the law school for many years and who was a popular teacher of a generation of Utah students. Bob Schmid took charge of what was an understaffed library and managed to pull the collection together, establishing an excellent law library, once new facilities were finally built, largely through the efforts of Dan Dykstra.

In 1957, Dan also had the good judgment to hire Rita Fordham, the one person all the faculty agreed they and the law school could not have functioned without, as overall administrative manager of the college. Indeed, for several years Rita was not only Dan's Administrative Assistant, but everyone else's assistant as well. She managed the Dean's office, records, and just about everything else Dan and the faculty could not cope with alone. She also befriended and helped countless law students to withstand the rigors of what was a demanding law faculty. Rita later met and married Jefferson B. Fordham, the Dean of the University of Pennsylvania Law School, when Jeff was serving as a summer visitor at Utah. Dan can be called a matchmaker because he was ultimately responsible for Rita and Jeff finding one another and for one of the great marriages of our time. Upon Jeff's retiring from the Deanship at Pennsylvania, Rita and Jeff returned to Utah where Jeff spent the remainder of his distinguished career as a member of the law faculty and a beloved teacher of a generation of Utah students. Rita continues to be one of the law school's most generous and caring supporters, all due to Dan Dykstra's good judgment many years ago to make Rita a member of the law school family and a life-long friend of his family.

This remarkable group of people that Dan helped to assemble began to build not only an outstanding law school, but one with a close and collegial faculty, which has remained a hallmark of the Utah College of Law ever since. Dan and Lily Dykstra were central to the creation of a special quality of the Utah faculty: a family of friends devoted to each other as well as the common goal of providing the best legal education possible, despite a limited budget and inadequate physical facilities. Dan's upbeat spirit, his warm personal relationship with the faculty, students, and bar, and his concern for creating a quality academic institution, brought a spirit to the place that was truly unique.

During those years, Dan, and the other young faculty members, also began bringing outstanding scholars and teachers to teach at the College, including Dan's mentor, Willard Hurst, from Wisconsin. They also recruited as visitors such great teachers and scholars as Wes Sturges, Alexander Frey, James Moore, Norval Morris, Richard Maxwell, Ed Barret, Stefan Riesenfeld, Wylie Davis, Charles Allen Wright, Kenneth York, Monrad

Paulsen, and Walter Derenberg. In 1954, one of the visitors, Zelman Cowan from the University of Melbourne, managed to entice Dan Dykstra and Sandy Kadish to Australia where they filled Fulbright Professorships. Dan went to Washington D.C. for a few months to join the Office of Price Stabilization under Harold Leventhal. Early in his teaching career, Dan's qualities as a teacher, scholar, and person were becoming well known to legal education leaders, while also helping to place the Utah College of Law on the national academic map.

During these early years of his career, Dan's skills as an outstanding and compassionate teacher became legendary with his students as well. One of his former students, Alan Matheson, who later taught at Arizona State Law School and served as Dean of that school, recently told me:

I remember Dan as a consummate gentleman: a wonderful teacher who could ask difficult questions with a smile on his face; a scholar who impressed me when he gave the general University lecture on the subject of the right most valued by civilized man; a dean who assembled a remarkable law faculty at a time when available resources were meager and who led the years-long effort to obtain a new law building. He was also calm in manner and generally unflappable. The only exception to this was a time when he discovered that some students had posted fake grades for a class as a prank and he lost his temper—deservedly so.

No matter who one talks to about Dan's years as a law professor, the comments are always the same: what an outstanding teacher he was; how he respected and cared for his students; what a gentle man he was; and how he was able to communicate the love of learning to his students. As Bob Schmid recently said, "Dan was not only one of the best teachers students ever encountered, he became their friend and model as well." One of Dan's former students at Utah (a fellow Dan gave a "C" to in torts and told him, "our 'C's' mean something") wrote Fred Emery, upon learning of Dan's death, to tell Fred that Dan was such a great teacher that he named one of his son's after him.

When invited to give the commencement address to the University community in 1961, Dan summed up his view of the characteristics of an educated person—a summary of values which epitomized the ideals Daniel J. Dykstra lived by as a teacher and communicated to his students: "a love of knowledge for the sake of knowledge, the ability and willingness to engage in critical thought, respect for one's fellow man, and an appreciation of the value of freedom of discussion."

Dan's students sensed the presence of all these qualities in his classes. Ronald Boyce, one of Dan's former students, a distinguished scholar and teacher of criminal law, and now a United States Magistrate, said of Dan:

Two things remain in my mind about Dan other than the fact that he was a superb scholar and classroom teacher. It was his upbeat and energetic style as well as his fairness in dealing with persons with whom he came in contact. His classroom method, while demanding, was always considerate and he took great care in dealing with individual students to insure that they not only understood the question being asked, but why it was being asked.

It was a teaching style which not only marked Dan as an educated person, but one concerned that his students become educated persons as well.

In 1954, Spence Kimball put down the burdens of the deanship at Utah and left for Wisconsin to pursue his scholarly interests in insurance law. Dan Dykstra was the unanimous choice of his colleagues, the President of the University, the governing board and the local community to become the next Dean. He had only been teaching law for six years and at Utah for five years, yet he had gained the trust and confidence of all those associated with the College, the University, and the community in that short time to be named Dean by acclamation. Dan's primary problems during his deanship were to obtain adequate quarters for the law school, and to protect the college from attempts by other schools to raid the faculty. During this time, faculty members had received offers from or were visiting at Yale, Wisconsin, Melbourne, Berkeley, NYU, Stanford, and Texas. Furthermore, the rapidly growing faculty and student body began to overwhelm the inadequate and outmoded space allocated to the College of Law.

Dan was able to keep most of his faculty by constantly seeking higher salaries, financial support for the students, research leaves for faculty, and by fostering a spirit of being involved in a mutual effort with the faculty for the benefit of each other and the students entrusted to their care. He made the Utah Law Review a student edited journal and, as a direct result of Dan's leadership and efforts to seek University support for the College, an outpouring of faculty and student scholarship took place during this time. His skills as an administrator were becoming evident, as was the fact that he enjoyed the challenges of administration. He was able to continue improving the academic quality of the institution while also maintaining the unique and close culture of students, faculty, and staff that came to mark the institution and endures to this day. It was during this time that a member of the Texas faculty volunteered to Dan that "Utah had the best law faculty of any school outside the first three or four in the country." The praise was in no small part due to the effort of Dan Dykstra to keep and build a faculty devoted to outstanding teaching and scholarship despite inadequate salaries and facilities—qualities of teaching and scholarship he exemplified in the highest degree and ones he is still remembered for at the Utah college of law.

Many also remember the close family relationship Dan and Lily had and how their children, Ann and Dan Jr., grew up as members of the faculty family as well as their own. Dan and Lily's mutual devotion, their care for Lily's delightful mother, and their warm home with its orchard of assorted fruit trees became happy memories for many of us. Wally and Evelyn Bennett, who could not be with us today because of illness, recently told me:

Our recollections of Dan always include Lily. Those two gracious people entertained at their home constantly, bringing together not just law faculty but other academic friends. We spent many evenings enjoying dinner, cocktail parties, and informal receptions at their home. Because of the frequent Dykstra social events, we were a close knit faculty knowing each other's families, projects, travels, and health concerns. As a result, we all became a close family. I recall Lily telling us about a comment Ann Marie made to her one day: "Mom, will you have a party so we can have some chips and dip?"

I can still recall the joy of watching the teenage Ann Dykstra and Jennifer Swenson growing up together. Who can ever forget what I think are the loudest shrieks and laughter ever heard from teenage children having so much fun together, and watching as they became life-time friends over the years? Dan Jr. and Eric and Jon Swenson became good friends as well, despite some of the adventures their fathers had arranged for them. Peggy Swenson recently told me her favorite story about the time Dan and Bob took Eric and Dan Jr. camping in the Wasatch Mountains. Peggy said:

Lily carefully prepared food for the trip and taught them how to fry eggs, etc. The trip was rather hectic and early one morning Dan decided they had had enough. They carefully folded up the tent and other camping equipment, jumped in the car and started the long journey back home. When they arrived, Lily prepared coffee and a nice hot breakfast for them. While they were all going on about the wonderful camping site and their adventures in the woods, Lily went out to the car. She returned with that "Oh, these college professors" look on her face and said, "Dan where is the tent and all the camping equipment?" After several minutes of absolute silence, they agreed to go back and look for the tent and equipment. They did so and found it carefully folded up on a table near where their car was originally parked. Before the professors left to go back to find the missing equipment, Lily quietly ordered, "I think the children better stay here!"

Stories like this were shared between us because we all felt we were one family who enjoyed each other's company socially as well as professionally,

although neither Dan nor Bob were ever known to go camping again. We owe much to Dan and Lily for fostering this mutual respect, friendship, sense of humor, and care for one another that continues to this day.

As Dean, another major effort by Dan was to secure the construction of a building to house the College of Law. Since its inception in 1884, legal education at Utah had no separate facilities of its own. Teaching had first been conducted in local law offices and then moved to the central administration building on the University campus in the early 1900's. By the early 1940's, the space allocated to the law school in a building which housed the University administration and other colleges, was clearly inadequate and overcrowded. The library collection was stacked in the halls, and the faculty and staff office space, as well as the student classroom and study space, were not just inadequate, they were atrocious. I recall that I shared my tiny and stuffy office with a family of pigeons who managed to take up residence through an open ventilator in the dim recesses of the building over my office. Dan pressed for construction of a separate building to house the College of Law, and I have it on good authority that he invited or welcomed an ABA report threatening the school with withdrawal of accreditation because of the abysmal state of the facilities. Rumor has it that Dan was even known to discourage University maintenance personnel from using a bit of paint to touch up the facilities or saw to it that a broken door frame was left that way when the accreditation team visited.

Over a period of two or three years, Dan devoted his considerable political skills to lobby every county bar association in the state, and any legislator or person of influence in the community, to gain support for the construction of a new law building. His efforts bore fruit one day in March of 1961, when the governing board adopted a resolution and appropriated funds to construct a new building for the College of Law. Paradoxically, on that same day the board accepted Dan Dykstra's resignation as Dean of the College of Law in order to appoint him to the position of Academic Vice-President of the University, succeeding Sterling McMurrin, who had just been appointed the Commissioner of Education.

Dan's tenure as Utah's Dean was remarkable not just because of the bricks and mortar he left behind when he moved on to University administration. He was responsible for greatly improving the academic quality of the College, the ability of the faculty to engage in serious scholarship, the quality and performance of the student body, and the relationships with the bar and general community. By virtue of his skill as a leader and administrator, the example he established by his tireless effort on behalf of his faculty and students, and the high standards he set for himself as a teacher and scholar. Dan brought the institution to an academic and collegial maturity that it still enjoys to this day. It is a legacy we continue to benefit from each

day and a foundation which promises to maintain the quality of the institution for decades to come.

Dan's role as Academic Vice-President of the University of Utah was much broader than it is in this day and age of complex University administrative structures. He was second in command to the University President and was a combination Provost and Vice-President for more than just academic affairs. He took an active role in dealing with the growing complexity of administering an expanding University, while improving the University faculty and the student body. During his tenure as Academic Vice-President, Dan expanded efforts to modernize the University facilities, developed the physical campus beyond the limited area it had occupied, and put in place the academic and research foundations for the subsequent growth of what has now become a major research university. Dan launched major building projects for the College of Medicine and University Hospital, the College of Engineering, the College of Business, and the College of Social and Behavioral Sciences. He recruited several key persons to the administration, like Boyer Jarvis, who recently told me of the immense gratitude he owes Dan for his career at Utah. Boyer said of Dan: "He was willing to make difficult, even unpopular, decisions when circumstances required, but he was always thoughtful and fair in his interactions with others." Dan established a standard for how a university should be administered by basing his decisions on the best interests of the students first, and trusting that everything else would fall into place in due course.

Dan also continued to foster the development of the College of Law. He assisted in the recruitment of Sam Thurman from Stanford to serve as the new Dean of the College of Law and authorized new additions to the faculty in the early 1960's. He also contributed to a University-wide effort to upgrade academic standards and to raise faculty salaries and research efforts. In his role as Academic Vice-President, Dan gained the admiration of the entire University community for his devotion to improving the institution and its facilities and the academic life of students and the faculty.

Dan was a serious candidate for President of the University, and when that did not come to pass because of a decision to seek a new President from outside the University, to the good fortune of the College of Law, Dan returned to our faculty where he served two more years as a member of the faculty. He resigned from our faculty in 1965 to become the first new faculty member of the law school at the University of California at Davis. Our great loss, as I am sure you all know, became the great fortune of the University of California at Davis, its students, and its faculty.

I would be remiss if I did not mention another quality of Daniel J. Dykstra, one which he did not hide during his years in Utah. Dan was an

academic and political liberal — not an easy thing to be in Utah then or now — a liberal in the truest sense of the word. He was a person who favored the maximum degree of personal freedom as guaranteed by law and as secured by the government's protection of basic civil liberties. He spoke out in public forums about the evils of segregation and defended academic freedom and the idea that a free society is dependent upon the widest possible dissemination of all ideas. When asked to deliver the most prestigious lecture at the University of Utah, the Reynolds Lecture,¹ Dan talked about what he believed to be the right most valued by civilized man: "the right to be left alone." He saw two values underlying the right to be left alone. The first he said

relates to man's existence as an individual. It rests upon the belief that unwarranted intrusion into thoughts, opinions and privacy not only interfere with man's serenity but also thwart his mental and spiritual development. Its strength is in the assumption that happiness, peace of mind, the proper unfolding of personality, can only exist in an atmosphere free from coercion.

The second value, illustrated by freedom of the press and freedom of speech, while concerned with the individual, is also directly related to the total welfare of society. This value is predicated on the realization that, unless man is let alone, ideas will neither be widely disseminated nor properly evaluated. As a consequence, society will be robbed of the benefits inherent in free discussion and maximum opportunity for criticism—benefits from which a democracy must draw its strength.

Dan made these remarks when the politics of the era were still pre-occupied with Communism and supposed threats to the security of the Nation. Many believed these threats were real and that there was a need for repressive laws, investigations of alleged subversives, and punishment of those claimed to be disloyal to the United States and its government. Not one to shy from controversy or to mince words, Dan concluded his address as follows:

[I]t is essential . . . that . . . we re-dedicate ourselves to the values inherent in the right to be left alone. Unless we do so, unless we come to appreciate more fully that our strength is not in informers, dossiers, and investigations; unless we comprehend that injustice to one is injury to all; unless we cease to play loosely with such words as "un-American" and "subversive;" unless we more fully recognize that the answer to advocacy

¹Daniel J. Dykstra, *The Right Most Valued By Civilized Man*, 6 UTAH L. REV. 305 (1959).

is counter-advocacy; unless we are willing to undergo the dangers of liberty in order that life will be more meaningful, there can be but one result. That result will be that that right once called the "right most valued by civilized man" will cease to exist and with it American democracy as we know it.

Dan returned to Utah in 1988 for a semester visit. It was as if he and Lily had never left. We exchanged stories from the past, talked about what Ann Marie and Dan Jr. were up to, and the delights of the Dykstra summer home in Idaho. Dan's smile lit up the room as it had in the past, and his concern for his students and colleagues was as strong as ever. One thing did change, however: for the first time that I can recall Dan was openly boastful. In an interview with the student newspaper, Dan boasted about his two grandchildren, then ages one and five, and about how fast they were growing up and what bright and lively children they were. That same interview also indicated that Dan's love of teaching and travel were as strong as ever. The interview started off with the observation: "there is at least one happy man at the University of Utah College of Law. Daniel J. Dykstra is happy because he's able to combine his teaching career with his love for traveling." The article then noted that Dan had traveled to teach at Stanford, Pennsylvania, Hawaii, Wisconsin, Minnesota, Texas, San Francisco, and Melbourne, Australia. I recall telling Dan that he and Lily must enjoy airline food because they are always flying off to one place or another for a visit. He laughed and said in his typical self-effacing manner: "No, no, I just never could hold a job for very long."

Dan Dykstra held a job for 17 years at the University of Utah, and he and Lily made a lasting contribution to the University and its College of Law. It is a contribution which helped place the school on the academic map and one which established an ethical and unique quality of academic life and mutual affection that remains with the faculty and students at Utah to this day. Dan, old friend, you have done your life's work with devotion and a distinction that few can ever hope to match. We who knew you and follow in your footsteps will be forever in your debt. Now that your life's journey has ended, we are finally free to say, without your embarrassed protest, how much you have meant to us, how much we admire you and Lily, and how much we love you. Rest in peace in the knowledge that you have lived a magnificent life and made a significant difference in the lives of more persons than you would ever permit one to catalogue in public or, for that matter, more persons than you could ever have known.